

REMARKS

Applicant respectfully requests reconsideration of this application in view of the foregoing amendment and following remarks.

Status of the Claims

Claims 1, 4, 5, 8, 9 and 14 are pending, of which claims 4, 5, 8, and 9 have been withdrawn as being directed to a non-elected species, i.e., claims 1 and 14 remain under consideration. By this amendment, claim 1 is amended. No new matter has been added by this amendment.

Election/Restriction

The Office Action indicates that "a complete reply to this non-final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP §821.01."

Applicant notes that the pending Office Action dated July 7, 2009 does not indicate that the application is in condition for allowance or is not made final. Accordingly, Applicant believes that the non-elected claims do not have to be canceled at this stage because some of the non-elected claims may be rejoined upon the allowance of the elected claims.

Response to Rejection under 35 U.S.C. § 102(b)

Claims 1 and 14 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by US Patent 5,889,576 to Fujieda ("Fujieda").

Referring to Figs. 9A and 9B of the present application, the controller of the ophthalmologic apparatus of claim 1 "determines" whether the eyelid of the eye to be examined covers a pupil area of the eye by comparing the pupil diameter with a predetermined value. For

example, while Fig. 9A shown below illustrates when the eyelid does not cover the pupil indicated as P, Fig. 9B illustrates when the eyelid does cover the pupil area.

FIG. 9A

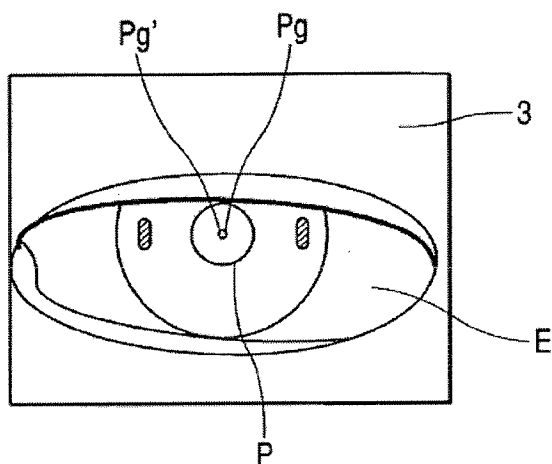
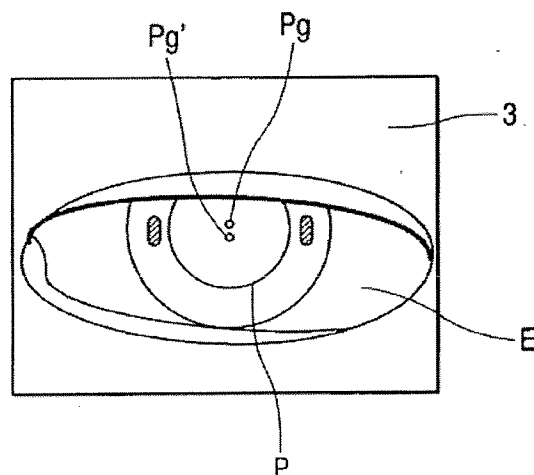


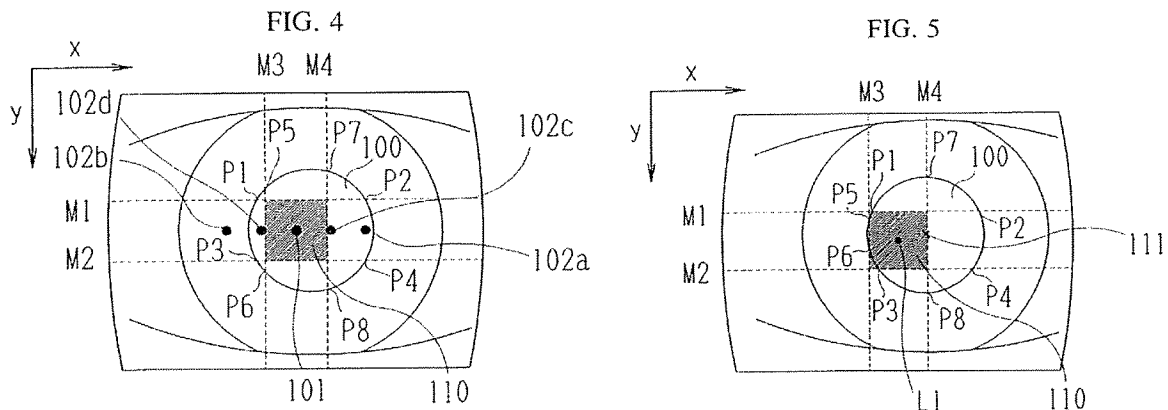
FIG. 9B



Upon determining whether the eyelid covers the pupil area or not, the controller of claim 1 "detects" the positional shift differently in the two different cases. For example, when the eyelid does cover the pupil area, the controller detects the positional shift between the position of the vertex of the cornea of the eye to be examined. In contrast, when the eyelid does not cover the pupil area, the controller detects the position shift between the center of the pupil of the eye and the eye examining portion. In other words, in the present invention, when the eyelid covers the pupil area, the detector does not use the center of the pupil of the eye to be examined to detect the positional shift. By providing such feature onto the ophthalmologic apparatus, a calculation time for obtaining the pupil center can be shortened, and therefore the measurement time decrease and the person to be examined is prevented from being put the heavy strain thereon.

In *Response to Arguments* section, the July 7, 2008 Office Action indicates that Fujieda discloses each and every element of claim 1 and cites portions of the specification including col. 5, lines 58-61; col. 6, lines 5-11, 44-54; and col. 8, lines 3-11, 13-45 along with Figs. 4, 5.

Fujieda discloses an ophthalmic apparatus in which a measurement area is defined and a measurement process is done differently depending on whether the defined measurement area is within the range of the pupil area or not. Referring to Figs. 4 and 5 as shown below, the rectangle area 110 is defined as a measurement area and it is determined that whether the defined measurement area is within the pupil area (i.e., as in Fig. 4) or not (i.e., as in Fig. 5) using a formula such as " $P1 \leq P5 < P7 \leq P2$, and $P3 \leq P6 < P8 \leq P4$ ".



Fujieda, however, fails to show or suggest a controlling unit of the present invention that measures differently depending on whether the eyelid of the eye to be examined covers a pupil area of the eye or not, as required by claim 1. Fujieda further fails to teach that a positional shift is measured between the position of a vertex of a cornea of the eye and the eye examining portion unit when the eyelid covers the pupil area, i.e., when the eyelid covers the pupil area, the detector does not use the center of the pupil of the eye to be examined to detect the positional shift. As Applicant explained in the previous response submitted on April 28, 2008, both the corneal vertex and the pupil center are always used in Fujieda, i.e., regardless of whether the

defined measurement area is within the range of the pupil area or not.

Additionally, Applicant notes that a portion of Fujieda describes that "[e]ven in the case where the pupil diameter is relatively large, thus the pupil is partially covered by an upper eyelid, the coordinates of P5 and P7 are to be treated likewise in the same manner." [col. 5, lines 58-61] Applicant believes that this portion of Fujieda further makes it clear that it fails to teach the present invention which requires a distinction between whether the eyelid covers the pupil area or not.

Accordingly, claim 1, and claim 14 in depending from claim 1, is believed neither anticipated by nor rendered obvious in view of the cited reference (i.e., Fujieda) for at least the reasons discussed above. Claim 1 has been amended slightly to merely correct the formalities such as a proper antecedent basis and improve the readability.

Reconsideration and withdrawal of the rejections of claims 1 and 14 under 35 U.S.C. §102(b) is respectfully requested.

Applicant has chosen in the interest of expediting prosecution of this patent application to distinguish the cited document from the pending claims as set forth above. However, these statements should not be regarded in any way as admissions that the cited document is, in fact, prior art.

Applicant believes that the application as amended is in condition for allowance and such action is respectfully requested.

AUTHORIZATION

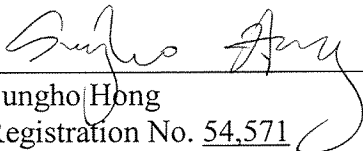
No petitions or additional fees are believed due for this amendment and/or any accompanying submissions. However, to the extent that any additional fees and/or petition is required, including a petition for extension of time, Applicant hereby petitions the Commissioner to grant such petition, and hereby authorizes the Commissioner to charge any additional fees, including any fees which may be required for such petition, or credit any overpayment to Deposit Account No. 13-4500 (Order No. 1232-5273). A DUPLICATE COPY OF THIS SHEET IS ENCLOSED.

An early and favorable examination on the merits is respectfully requested.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: September 29, 2008

By:


Sungho Hong
Registration No. 54,571

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 (Telephone)
(212) 415-8701 (Facsimile)

AUTHORIZATION

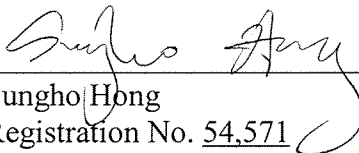
No petitions or additional fees are believed due for this amendment and/or any accompanying submissions. However, to the extent that any additional fees and/or petition is required, including a petition for extension of time, Applicant hereby petitions the Commissioner to grant such petition, and hereby authorizes the Commissioner to charge any additional fees, including any fees which may be required for such petition, or credit any overpayment to Deposit Account No. 13-4500 (Order No. 1232-5273). A DUPLICATE COPY OF THIS SHEET IS ENCLOSED.

An early and favorable examination on the merits is respectfully requested.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: September 29, 2008

By:


Sungho Hong
Registration No. 54,571

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 (Telephone)
(212) 415-8701 (Facsimile)